

## 1. Extent to Which Residents of Covington Work in Covington

47. The Commission has generally required that allotment proponents “establish that a majority of residents live and work in the community.”<sup>48</sup> Joint Petitioners provided no evidence to establish this factor. Worse, the *Report and Order* did not even recite this as a factor to be examined, much less analyze MISD’s demonstration that, at a maximum, only 35% of Covington’s civilian labor force (and only 18% of Covington’s total population) can work in Covington.<sup>49</sup> The Commission has found it to be “significant” where 46.5% of employment age residents worked outside of the proposed community of license and within the larger nearby central city.<sup>50</sup> For unexplained reasons, the *Report and Order* did not consider this or any other data MISD supplied on the issue.<sup>51</sup>

48. MISD’s analysis was consistent with the Census Bureau statistics demonstrating that the vast majority of residents within the Covington zip code are employed outside of that area. Again, the *Report and Order* did not consider any of this material.

49. The evidence demonstrates that a majority of the Covington workforce are employed outside of Covington and elsewhere within the Seattle Urbanized Area. Accordingly, the evidence under factor 1 strongly suggested that Covington is interdependent with the larger

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community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *Tuck*, 3 FCC Rcd at 5378.

<sup>48</sup> *Pleasanton, Bandera and Schertz, Texas*, 15 FCC Rcd 3068, 3071 (2000).

<sup>49</sup> MISD Comments at pp. 10-12. Joint Petitioners conceded that the figure is likely far lower.

<sup>50</sup> See *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (Allocations Branch 2001).

<sup>51</sup> For example, the *Report and Order* completely ignored perhaps the most telling Census Bureau statistics on this factor: the 33.9 mean travel time to work for Covington residents. Given that it takes approximately five (5) minutes to travel across Covington by vehicle, the foregoing statistics support only one conclusion: the mean citizen does not work in Covington, but elsewhere in the Seattle Urbanized Area. See Attachment II to MISD’s Comments (Of the 7,013 persons in Covington that were employed – out of a civilian labor force of 7,350 – 6,899 commuted to work. Of those, 6,472 commuted via vehicle, 134 used public transportation, 27 walked, 29 used other means and 237 worked at home.)

Seattle Urbanized Area. The *Report and Order's* failure to consider this evidence and to apply it to this case warrants reconsideration.

## **2. Newspapers and Other Media**

50. The *Report and Order* likewise failed to consider and apply this factor. Joint Petitioners conceded that Covington does not have its own daily newspaper. MISD demonstrated that Covington not only lacks a daily newspaper, it does not even have a weekly paper.<sup>52</sup>

51. The Commission found it “significant” in *KFRC* that Richmond did not have its own daily newspaper, particularly because the San Francisco daily newspaper had such wide distribution throughout the Bay area. The lack of a Covington paper is equally significant here given the existence of not one, but two daily papers that serve the Seattle Urbanized Area: the Seattle Times and the Seattle Post-Intelligencer, both of which have South King County bureaus (as does the Morning News Tribune of nearby Tacoma).<sup>53</sup>

52. Had there been any analysis on this factor, the only conclusion that could have been reached was that Covington is interdependent with the Seattle Urbanized Area.

## **3. Community Perception**

53. As with the first two factors, the Audio Division did not consider, much less provide any analysis on this issue. This omission was perhaps understandable since Joint Petitioners did not provide even a single statement from a Covington community leader as to the issue of

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<sup>52</sup> MISD demonstrated that Joint Petitioners’ attempt to establish this factor through reliance on the daily *South County Journal* was meritless.

<sup>53</sup> MISD also established the irrelevance of the magazine *Washington CEO*, as well as the existence of a Covington website, to Covington’s independence.

whether they perceive Covington to be separate from the larger Seattle Urbanized Area.<sup>54</sup> Because of this failure, Joint Petitioners should be deemed to have conceded this issue, i.e., community perception is that Covington is not separate from the larger urbanized area.

**4-5. Whether the Specified Community has its Own Local Government and Elected Officials/Own Telephone Book Provided by the Local Telephone Company or Zip Code**

54. As noted in the *Report and Order*, Covington does have its own local government and elected officials. This, however, is virtually the lone element in the entire analysis standing in favor of the allotment.

55. Commission policy holds that a community will be considered to be independent only when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area, this one factor is insufficient to support the allotment's grant.<sup>55</sup> Where only one element out of eight factors to be examined within the context of three overarching criteria suggests a finding of independence, interdependence is the only reasonable conclusion that can be reached. The *Tuck* factors and criteria here are overwhelmingly in favor of a finding that Covington is interdependent with Seattle and the Seattle Urbanized Area and not entitled to a first local preference.

56. The finding that Covington has its own zip code is demonstrative of a failure to fully consider the countervailing evidence. MISD demonstrated that Covington does not have its own zip code and that it is within the boundaries of 98042 which is associated with Kent, Covington and Lake Sawyer.<sup>56</sup> Not only that, but MISD demonstrated that of those communities, the U.S.

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<sup>54</sup> Joint Petitioners sole showing on the issue was to recite basic facts regarding Covington's incorporation in 1997 and to extract a quote from the City's Vision Statement. This falls far short of establishing that Covington's leadership perceive the community to be separate from, and independent of, the Seattle Urbanized Area.

<sup>55</sup> See, e.g., *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996).

<sup>56</sup> See MISD's Comments at Attachment VII.

Postal Service lists Kent as the main community for zip code 98042 as does the Qwest telephone directory.<sup>57</sup>

57. The finding also disregards MISD's evidence that only 36% of those residing in zip code 98042 reside in Covington.<sup>58</sup> The *Report and Order* also failed to consider Joint Petitioners' concession that Covington does not have its own telephone book and that the area directory does not even separately identify Covington in its listings.<sup>59</sup>

**6. Whether the Community Has its Own Commercial Establishments, Health Facilities, and Transportation Systems**

58. As with the previous factors, the minimal information provided here was insufficient to demonstrate Covington's independence from the Seattle Urbanized Area. The *Report and Order* mentions only that Covington has some local businesses, but, in failing to address its lack of health and transportation systems, failed to engage in the required analysis.

59. The evidence demonstrated that, while Covington may have a variety of small businesses located within its city limits, it does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Covington are dependant upon King County Metro for public transportation. They are likewise dependant upon the Seattle Urbanized Area for longer distant travel as train, bus and air terminals are all located elsewhere in the Urbanized Area.

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<sup>57</sup> See MISD's Comments at Attachment VIII.

<sup>58</sup> See MISD's Comments at Attachments I and II.

<sup>59</sup> See MISD's Comments at Attachment VIII.

**7. Extent to Which the Specified Community and the Central City are Part of the Same Advertising Market**

60. Here lies another factor that the *Report and Order* failed to consider or analyze. MISD demonstrated that Covington and Seattle are part of the same advertising market.<sup>60</sup> The *Report and Order* also failed to consider Covington's location within the Seattle Basic Trading Area and that, for a number of licensing purposes, the Commission considers Covington and Seattle to be one and the same.

**8. The Extent to Which the Specified Community Relies on the Larger Metropolitan Area for Various Municipal services such as Police, Fire Protection, Schools, and Libraries.**

61. The *Report and Order's* finding that Covington has its own police services is belied by the evidence supplied in MISD's Comments and fails to reflect that the force is actually provided pursuant to a contract with the King County Sheriff's Department. The fact that the Covington Chief of Police maintains his/her rank in the King County Sheriff's Department and is subject to reassignment and that the Covington Police web page is provided by the King County Sheriff's Department should have been dispositive of the issue.<sup>61</sup> The *Report and Order* also accepted Joint Petitioners claim that Covington has its own fire department, notwithstanding the clear evidence that Covington is wholly reliant upon Kent Fire and Life Safety and King County Fire District 37 for its fire fighting services.<sup>62</sup>

62. The *Report and Order* also blindly accepted, without any analysis, Joint Petitioners' assertion that Covington provides its own water service. MISD demonstrated that the Covington Water District ("CWD") is not even located in Covington, much less run by the city of

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<sup>60</sup> MISD Comments at pp. 17-18.

<sup>61</sup> See MISD Comments at Attachment IX.

<sup>62</sup> See MISD Comments at Attachment X hereto, City of Covington Comprehensive Plan, 10. Capital Facilities Element. Only pages 1-2 were reproduced. The *Report and Order* also failed to reconcile that a portion of Covington is reliant on the Maple Valley Fire and Life Safety and King County Fire District 43.

Covington, and that members of the Covington City Counsel have taken pains to divorce the CWD from the City.<sup>63</sup> The *Report and Order's* finding that Covington has its own water services is contrary to the evidence.

63. Nor does Covington provide its own sanitation services. MISD's Comments demonstrated that Covington's sewer service is provided by the Soos Creek Water and Sewer District ("SCWSD") located at 14616 SE 192<sup>nd</sup> Street, Renton, Washington. MISD further established that SCWSD is a municipal corporation of King County, Washington that provides water and sewer services to almost 100,000 people in southeast King County, including Covington. Again, the *Report and Order's* finding is unsupported by the evidence.

64. The *Report and Order* failed to take into consideration the fact that Covington does not have its own library (a fact that Joint Petitioners conceded) and that the Covington Library is part of the King County Library System ("KCLS"). According to the KCLS website, "KCLS is the third largest circulating library in the United States. Located in the Seattle area, the Library System includes 42 libraries, and a Traveling Library Center which serve over one million residents."<sup>64</sup>

65. The *Report and Order* correctly notes that Covington's local schools are not provided by the City of Seattle, emphasizing that those services are provided by the Kent School District. But given that the Kent School District is adjacent to Seattle and is the fourth largest in the state,<sup>65</sup> that only proves the point that Covington is reliant upon the metropolitan area for its services and does not provide them independently.

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<sup>63</sup> MISD Comments at Attachment XI and XII.

<sup>64</sup> <http://www.kcls.org/kcls/abtfront.htm>

<sup>65</sup> [http://www.kent.k12.wa.us/KSD/CR/KSD\\_facts.html](http://www.kent.k12.wa.us/KSD/CR/KSD_facts.html)

66. The evidence demonstrates that Covington relies almost entirely on the larger metropolitan area for its municipal services. To the extent the community provides its own municipal services, those services are not nearly as extensive as those that existed in *Huntington* and *KFRC*, neither of which were entitled to a first local service preference. See 192 F.2d at 34, 5 FCC Rcd 3224.

## **VI. COVINGTON DID NOT WARRANT A FIRST LOCAL SERVICE PREFERENCE**

67. Given the signal population coverage of Joint Petitioners' reallocation proposal and the huge size disparity between Covington and Seattle and the proximity between the two, Joint Petitioners' showing under the third *Tuck* criterion fell well short of establishing that Covington is independent of the much larger central city of Seattle and the Seattle Urbanized Area. Rather, the evidence demonstrates that Covington is interdependent with Seattle and the Seattle Urbanized Area.

68. Of the eight factors within the third *Tuck* criterion, **not one** weighed in favor of finding Covington independent from Seattle and the Seattle Urbanized Area. No first local service preference should have been awarded to Covington.

69. The proposed allotment did not warrant award of a first local service preference and should have been treated "as simply an additional allotment to the urban area."<sup>66</sup> That is, all of the services of the Seattle Urbanized Area should have been attributed to Covington and the reallocation proposal should have been considered pursuant to FM allotment priority four, "other

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<sup>66</sup> *KFRC*, 5 FCC Rcd at 7097

public interest matters.”<sup>67</sup> By failing to reach this conclusion, the *Report and Order* “condone[s] an artificial and unwarranted manipulation of the Commission’s policies.”<sup>68</sup>

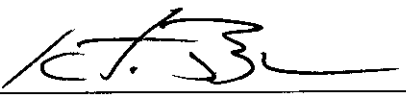
70. Furthermore, the proposed reallocation of Channel 283C is mutually exclusive with KMIH(FM)’s existing operations. As MISD detailed, the station serves as a valuable training ground for students of the school district and is a significant asset to the Mercer Island community. Reconsideration as discussed herein will reveal that the public interest is not served by grant of the Joint Petitioners proposal and that it is best served by grant of MISD’s proposed Class A allotment for KMIH(FM) at Mercer Island.

### **CONCLUSION**

Wherefore, the premises considered, Mercer Island School District respectfully requests reconsideration of the *Report and Order*, that Joint Petitioners’ proposed reallocation of KMCQ(FM) from The Dalles, Oregon to Covington, Washington be rejected, and that KMIH(FM) be granted a Class A allotment at Mercer Island, Washington.

Respectfully submitted,

**MERCER ISLAND SCHOOL DISTRICT**

By:   
Howard J. Barr  
Its Counsel

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August 20, 2004

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<sup>67</sup> *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681, 12684 (Allocations Branch 1996).

<sup>68</sup> *Id.*



## **EXHIBIT A**



***du Treil, Lundin & Rackley, Inc.***  
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**MEMORANDUM**

**Date: January 24, 2004**

**To: Bert Goldman  
Hal Rose  
Dominic Monahan**

**From: Jonathan N. Edwards  
Direct Line: (941) 329-6010  
e-mail: jon@dlr.com**

**Subject: KMIH(FM), Mercer Island, WA Class D**

This memo will report on alternate channel search conducted for Class D station KMIH(FM), at Mercer Island, WA in order to permit the KMCQ move into the Seattle market on channel 283C3/C2 (104.5 MHz). Currently, KMIH is licensed to operate on channel 283 with a non-directional effective radiated power (ERP) of 30 Watts and an antenna height above average terrain (HAAT) of 69 meters (BLED-20020517ABE).

In accordance with § 73.512(a) we studied the commercial band (221-300), then channel 200, then the non-commercial band (201-220). Channel 200 was eliminated due to close proximity with the Canadian border {§ 73.509(a)(2)}. There were also a few potential channels available domestically on a waiver basis) in the non-commercial band (specifically 201 & 205), but they were eliminated due to a nearby Canadian TV channel 6 assignment.

No channels were found in the commercial band that did not require use of an adjacent-channel interference waiver. Many channels involved both a lower and upper second-adjacent allocation issue, except for channel 270 (101.9 MHz). Specifically, channel 270 would require a waiver to lower second-adjacent station KPLZ-FM, on channel 268C (Fisher Broadcasting) and upper third-adjacent station KZOK-FM, on channel 273C (Infinity Radio).

Figure 1 is an allocation study for KMIH on channel 270. Our allocation study is based on contour protection using the FM translator rules and presumes the maximum HAAT for all stations. It is noted that the Figure 1 allocation study assumes the FCC's -40 dB D/U ratio for translators/boosters and not the -20 dB ratio for Class D stations with respect to second-adjacent channel stations. Detailed studies used the -20 dB ratio for interference with caused analysis.

Interference received studies were also conducted to determine what impact surrounding stations may have on KMIH when moved to channel 270D. Currently, on channel 283D, it appears that KMIH is receiving some interference from first-adjacent station KAFE, on channel 282C. On the proposed channel 270D, KMIH is calculated to receive interference from only one of the second-adjacent

stations mentioned above (KPLZ-FM). We have assumed a more realistic -40 dB D/U ratio for interference received by second-adjacent stations since that is the ratio that the FCC uses for all other FM services (i.e., primary, translators and boosters). The calculated interference population received by KMIH for both channels is tabulated below.

	Within KMIH 60 dBu	Interference caused to KMIH	Interference Free Population
KMIH 283D (30 Watts)	136,700	18,000 (KAFE)	118,700
KMIH 270D (30 Watts)	136,700	20,500 (KPLZ-FM)	116,200
KMIH 270D (40 Watts)	164,100	44,200 (KPLZ-FM)	119,900

As shown, KMIH will replicate about 85 percent of its current interference-free service population if moved to channel 270D with the same power as licensed (30 watts). Also shown in the table above is that a 20-25 percent power increase would be needed to replicate the same interference-free service population.

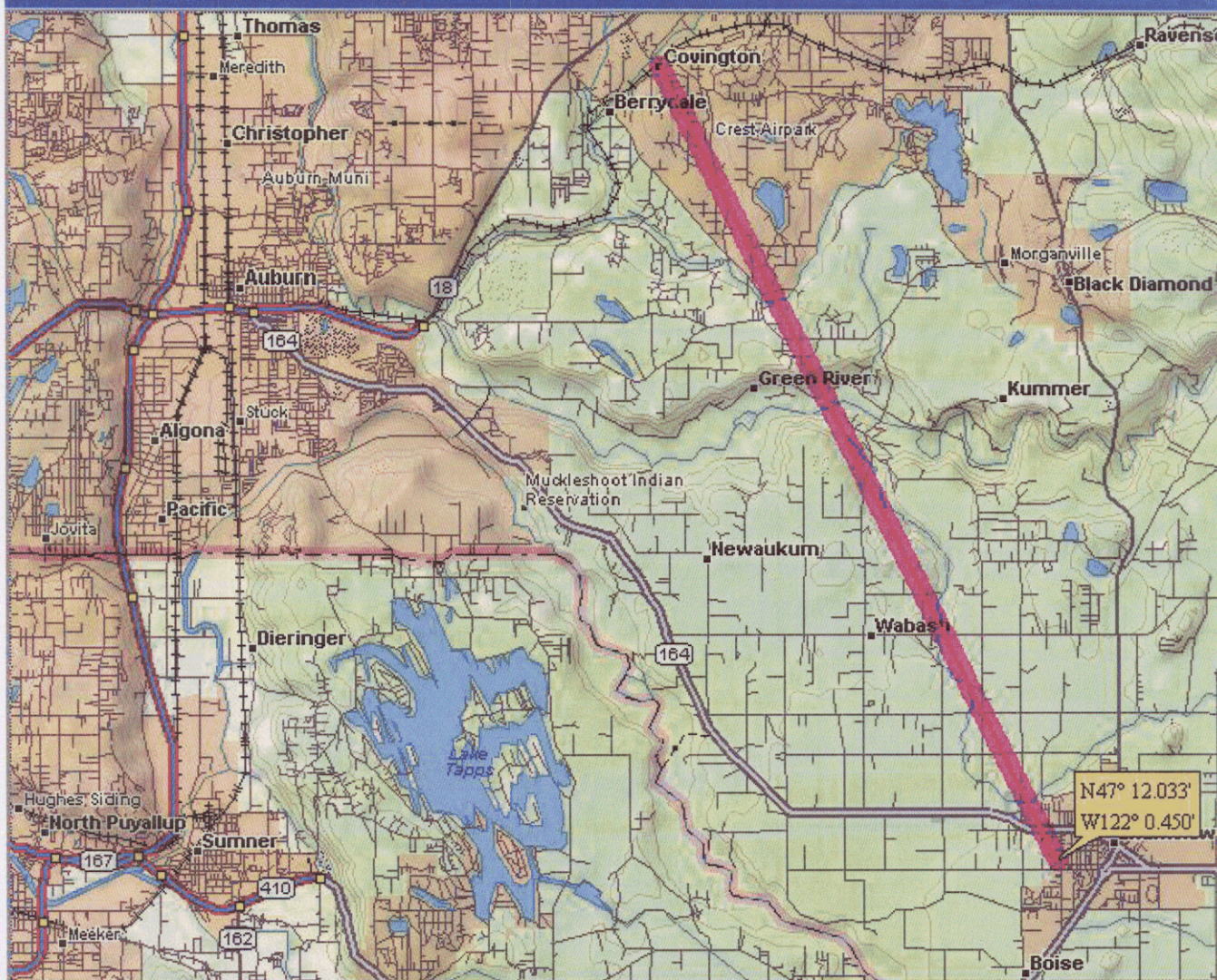
If there are any questions regarding this report, please do not hesitate to call Jeff Reynolds or myself.

Regards,  
Jon

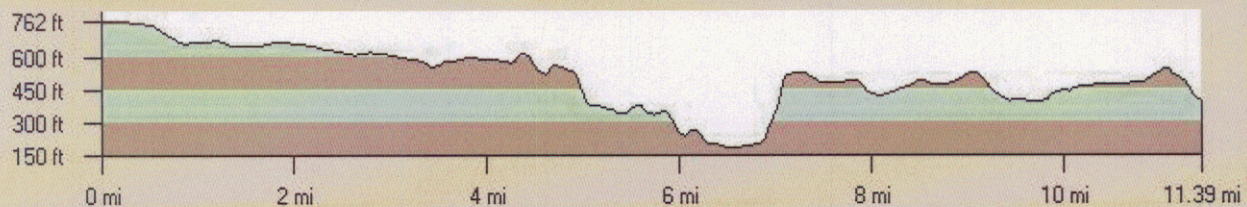
dLR:3306A.3497  
enclosures

## **EXHIBIT B**





Find Print MapData Draw GPS Route **Profile** 3-D Map Display [NetLink](#)



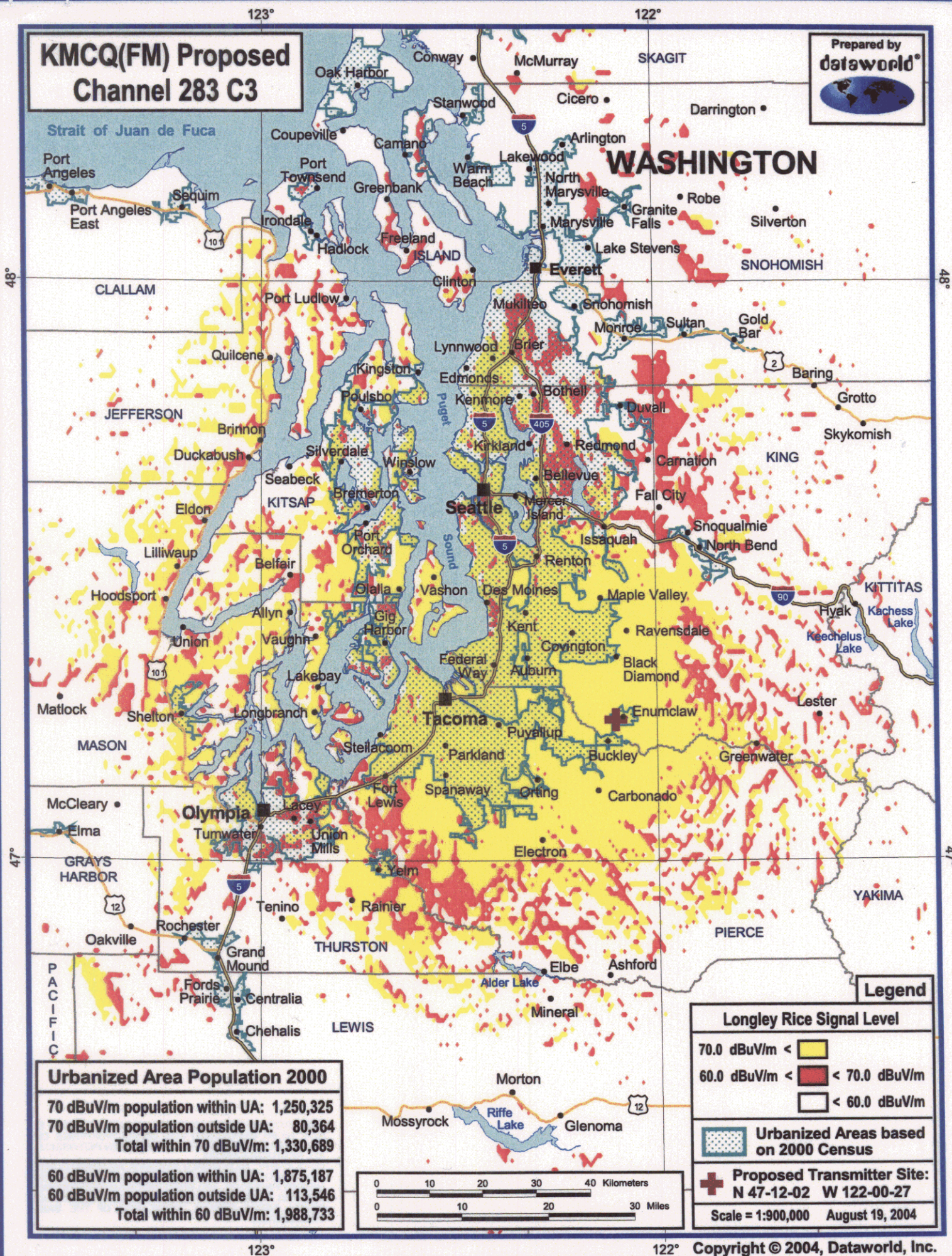
Latitude  
Longitude  
Linear Distance  
Terrain Distance  
Reverse



## **EXHIBIT C**



# KMCQ(FM) Proposed Channel 283 C3



## Urbanized Area Population 2000

70 dBuV/m population within UA: 1,250,325  
 70 dBuV/m population outside UA: 80,364  
 Total within 70 dBuV/m: 1,330,689

60 dBuV/m population within UA: 1,875,187  
 60 dBuV/m population outside UA: 113,546  
 Total within 60 dBuV/m: 1,988,733

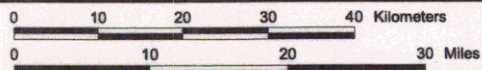
## Longley Rice Signal Level

70.0 dBuV/m < [Yellow Box]  
 60.0 dBuV/m < [Red Box] < 70.0 dBuV/m  
 [White Box] < 60.0 dBuV/m

[Dotted Box] Urbanized Areas based on 2000 Census

[Red Cross] Proposed Transmitter Site:  
 N 47-12-02 W 122-00-27

Scale = 1:900,000 August 19, 2004





**Dataworld, Inc.  
P.O. Box 30730  
Bethesda, MD 20824**

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Date: August 19, 2004  
Title: KMCQ FM Proposed C3  
Coordinates: 47-12-02 122-00-27  
ERP: 25 kW  
c/r HAAT: 100 m  
Longley Rice Population: 70 dBu, 60 dBu  
Urbanized Area Population: Seattle/Takoma Washington



**Dataworld, Inc.**  
**P.O. Box 30730**  
**Bethesda, MD 20824**

August 19, 2004

City Grade (70 dBu) Contour

Seattle-Takoma, Washington Urbanized Area Population	2,712,205
Population within Urbanized Areas	1,250,325
Population outside Urbanized Areas	80,364

Grade A (60 dBu) Contour

Seattle-Takoma, Washington Urbanized Area Population	2,712,205
Population within Urbanized Areas	1,875,187
Population outside Urbanized Areas	113,546

**CERTIFICATE OF SERVICE**

I, Howard J. Barr, do hereby certify that I have on this 20<sup>th</sup> day of August, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing "Petition for Reconsideration" to the following:

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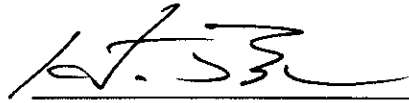
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A handwritten signature in black ink, appearing to read "H. J. Barr", written over a horizontal line.

Howard J. Barr

\* Hand Delivered